

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

Case No. 1:23-cv-4468

NY BLACK AND GOLD CORPORATION,

Plaintiff,

v.

ADAR MEDICAL UNIFORMS LLC, JP  
PROMOTIONAL PRODUCTS, INC.,  
FRANK BEE ENTERPRISES, INC. d/b/a  
SCHOOLUNIFORMS.COM, RIZNO,  
INCORPORATED d/b/a  
PULSEUNIFORM.COM, CAREISMATIC  
BRANDS, LLC d/b/a ALLHEART.COM,  
PIRANHA BRANDS, LLC d/b/a  
SCRUBAUTHORITY.COM, M'PRINTS  
PROMOTIONAL PRODUCTS LLC,  
ROWAN ENTERPRISES, LLC d/b/a  
BRIGHTIDEASSTORE.COM, SASSONE  
LABWEAR LLC d/b/a LABWEAR.COM,  
CUNNINGHAM DRUG CO., and  
TRANSFORM SR BRANDS LLC d/b/a  
SEARS.COM and d/b/a K MART.COM,

Defendants.

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**COMPLAINT**

Plaintiff NY Black and Gold Corporation (“Plaintiff”) sues defendants Adar Medical Uniforms LLC (“Adar”), JP Promotional Products, Inc. (“JP”), Frank Bee Enterprises, Inc. d/b/a SchoolUniforms.com (“School Uniforms”), Rizno, Incorporated d/b/a PulseUniform.com (“Pulse Uniform”), Careismatic Brands, LLC d/b/a AllHeart.com (“AllHeart”), Piranha Brands, LLC d/b/a ScrubAuthority.com (“Scrub Authority”), M’Prints Promotional Products LLC (“M’Prints”), Rowan Enterprises, LLC d/b/a BrightIdeasStore.com (“Bright Ideas”), Sassone Labwear LLC d/b/a Labwear.com (“LabWear”), Cunningham Drug Co. (“Cunningham”), and Transform SR Brands LLC d/b/a Sears.com and d/b/a Kmart.com (“Transform”) (collectively the “Defendants”),

and alleges as follows:

**THE PARTIES**

1. Black and Gold is a corporation organized and existing under the laws of the State of California with its principal place of business located in Santa Monica, CA.
2. Adar is a limited liability company organized and existing under the laws of the State of New York with its principal place of business located at 24 Division Place, Brooklyn, NY 11222.
3. JP is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 100 Executive Blvd, Suite 101, Ossining, NY 10562.
4. School Uniforms is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 3439 East Tremont Ave, Bronx, NY 10465.
5. Pulse Uniform is a corporation organized and existing under the laws of the State of Georgia with its principal place of business located at 205 Bell Place, Suite D, Woodstock, GA 30188. Pulse Uniform's agent for service of process is Norman Rao, S, Woodstock, GA, 30188.
6. AllHeart is a limited liability company organized and existing under the laws of the State of California with its principal place of business located at 1119 Colorado Ave, Santa Monica, CA 90401. AllHeart's agent for service of process is Paracorp Incorporated, 2804 Gateway Oaks Dr., Sacramento, CA 95833.
7. Scrub Authority is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 10658 West Centennial Road, Suite 400, Littleton, CO 80127. Scrub Authority's agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington,

DE 19801.

8. M'Prints is a limited liability company organized and existing under the laws of the State of Mississippi with its principal place of business located at 3200 Highway 39 North, Meridian, MS 39301. M'Prints' agent for service of process is Tim Hogan, 3200 Highway 45 N, Meridian, MS 39301.

9. Bright Ideas is a limited liability company organized and existing under the laws of the State of New Mexico with its principal place of business located at 7400 Montgomery Blvd NE, Suite 3, Albuquerque, NM 87109. Bright Ideas' agent for service of process is Frank Rowan, 8816 Democracy Rd NE, Albuquerque, NM 87109.

10. LabWear is a limited liability company organized and existing under the laws of the State of Connecticut with its principal place of business located at 3 Argentine Way, Norwalk, CT 06850. LabWear's agent for service of process is Lawrence W. Andrea, Esq., 127 Kent Hollow Rd, Kent, CT 06757.

11. Cunningham is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business located at 201 N Broad St., New Tazewell, TN 37825. Cunningham's agent for service of process is Frankie Tolliver, 201 N. Broad St., New Tazewell, TN 37825.

12. Transform is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 5407 Trillium Boulevard, Suite B120, Hoffman Estates, IL 60192. Transform's agent for service of process is Cogency Global Inc., 850 New Burton Road, Suite 201, Dover, DE 19904.

#### **JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§

1331 and 1338(a).

14. This Court has personal jurisdiction over Defendants because they have maintained sufficient minimum contacts with New York such that the exercise of personal jurisdiction over them would not offend traditional notions of fair play and substantial justice.

15. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a) because Defendants or their agents reside or may be found in this district. “A defendant ‘may be found’ wherever that person is amenable to personal jurisdiction.” Cavu Releasing, LLC. v. Fries, 419 F. Supp. 2d 388, 394 (S.D.N.Y. 2005). In other words, “[v]enue is proper in his District because the defendants are subject to personal jurisdiction in this District.” Noble v. Crazetees.com, 2015 U.S. Dist. LEXIS 130508, at \*9 (S.D.N.Y. July 16, 2015).

## FACTS

### I. Plaintiff’s Business and History

16. Plaintiff is a premier creative social media company (see <https://blackandgoldagency.com/>). It creates stunning custom photography for the social feeds of brands and influencers.

17. Plaintiff provides social media management and email marketing services to companies across North America in the fashion, beauty, wellness, fitness, consumer goods, technology, and non-profit sectors.

18. Plaintiff has worked with some of the most respected names and brands in the industry, including but not limited to, Marc Jacobs, Eli Tahari, Alex & Ani, Guess, Makeup Geek, Rejuva Minerals, Tangle Teezer, Julie Vos, Hill House, Lynnban, Planted in Beauty, and Moroccanoil.

## II. The Work at Issue in this Lawsuit

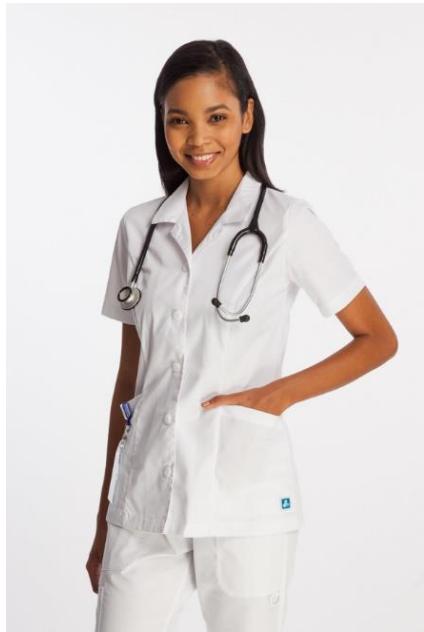
### A. The First Photograph

19. In 2015, Plaintiff took a professional photograph of a model wearing an Adar Tailored Consultation Coat titled “1192\_Adar\_1657” (the “First Photograph”). A copy of the First Photograph is exhibited below:



### B. The Second Photograph

20. In 2015, Plaintiff took a professional photograph of a model wearing an Adar Lapel Collar Buttoned Top titled “1192\_Adar\_1084” (the “Second Photograph”). A copy of the Second Photograph is exhibited below:



### C. The Third Photograph

21. In 2015, Plaintiff took a professional photograph of a model wearing an Adar Belted Lab Coat titled “1192\_Adar\_1418” (the “Third Photograph”). A copy of the Third Photograph is exhibited below:



**D. The Fourth Photograph**

22. In 2015, Plaintiff took a professional photograph of a model wearing an Adar Pop-Stretch Snap Front Lab Coat titled “1192\_Adar\_2126” (the “Fourth Photograph”). A copy of the Fourth Photograph is exhibited below:



23. The First Photograph, Second Photograph, Third Photograph, and Fourth Photograph are collectively referred to herein as the “Work.”

24. The Work was registered by Plaintiff with the Register of Copyrights on April 29, 2020 and was assigned Registration No. VA 2-205-529. A true and correct copy of the Certification of Registration pertaining to the Work is attached hereto as Exhibit “A.”

25. Plaintiff is the owner of the Work and has remained the owner at all times material hereto.

**III. Defendants’ Unlawful Activities**

26. Adar has been designing, manufacturing, and distributing medical work uniforms

since 1971.

27. In May 2015, Plaintiff and Adar entered into a licensing agreement (the “Agreement”) (attached hereto as Exhibit “B”) for several original photographs, including the Work. These photographs were taken by Plaintiff for Adar to market its line of medical lab coats and other hospital uniforms.

28. The Agreement specifically provides (in the “USAGE LICENSE” section): “This license grants the Client (“Licensee”) a non-transferable, exclusive license to use the above-mentioned images. You may not sell, rent, lease, or sublicense the photos to any other companies or entities not mentioned in this license agreement.”

29. Upon information and belief, Adar distributed the Work to third party retailers, including but not limited to JP, School Uniforms, Pulse Uniform, AllHeart, Scrub Authority, M’Prints, Bright Ideas, LabWear, Cunningham, and Transform (the “Sellers”), in connection with the sale of its products. This distribution to the Sellers is in violation of the above-referenced terms of the Agreement.

30. Adar advertises/markets its businesses primarily through its website (<https://adaruniforms.com/>) and social media (e.g., [https://www.facebook.com/adameduniforms](https://www.facebook.com/adarmeduniforms)).

31. JP is an authorized distributor and seller of many leading brands including, but not limited to, Adar’s medical uniforms.

32. JP advertises/markets its business primarily through its website (<https://www.jppromoproducts.com/>) and social media (e.g., <https://www.facebook.com/JPPromoProductsInc> and <https://www.instagram.com/jpprom401/>).

33. School Uniforms specializes in the distribution and custom manufacturing of

uniforms and other supplies, selling them on its site.

34. School Uniforms advertises/markets its business primarily through its website (<https://schooluniforms.com/>) and social media (e.g., <https://www.facebook.com/FrankBeesales/> and <https://www.instagram.com/schooluniformscom/>).

35. Pulse Uniform has been an online provider of several medical uniform brands since its establishment in 2003.

36. Pulse Uniform advertises/markets its business primarily through its website (<https://www.pulseuniform.com/>) and social media (e.g., <https://www.facebook.com/PUmedicalscrubs/> and <https://www.instagram.com/pulseuniform/>).

37. AllHeart is an online retailer providing medical apparel from its portfolio of brands to healthcare professionals and students.

38. AllHeart advertises/markets its business primarily through its website (<https://www.allheart.com/>) and social media (e.g., <https://www.facebook.com/allheart/> and <https://www.instagram.com/pulseuniform/>).

39. Scrub Authority is an online store allowing its customers to choose from its large selection of medical scrubs and nursing uniforms.

40. Scrub Authority advertises/markets its business primarily through its website (<https://scrubauthority.com/>) and social media (e.g., <https://www.facebook.com/scrubauthorityco/> and <https://www.linkedin.com/company/scrub-authority/>).

41. M'Prints specializes in providing screen print, embroidery, and promotional products and services to businesses and organizations.

42. M'Prints advertises/markets its business primarily through its website

(<https://www.mprintspromo.com/>) and social media (e.g., <https://www.facebook.com/mprintsmeridian/> and <https://www.instagram.com/mprintspromo/>).

43. Bright Ideas provides advertising services to businesses such as embroidery and screen-printing logos for branded promotional products.

44. Bright Ideas advertises/markets its business primarily through its website (<https://www.brightideasstore.com/>) and social media (e.g., <https://www.facebook.com/BrightIdeasAlbuquerque> and [https://www.instagram.com/bright Ideas\\_abq/](https://www.instagram.com/bright Ideas_abq/)).

45. LabWear sells medical attire and clothing from a wide range of designers and suppliers through its online store.

46. LabWear advertises/markets its business primarily through its website (<https://labwear.com/>) and social media (e.g., <https://www.facebook.com/Labwear1/>).

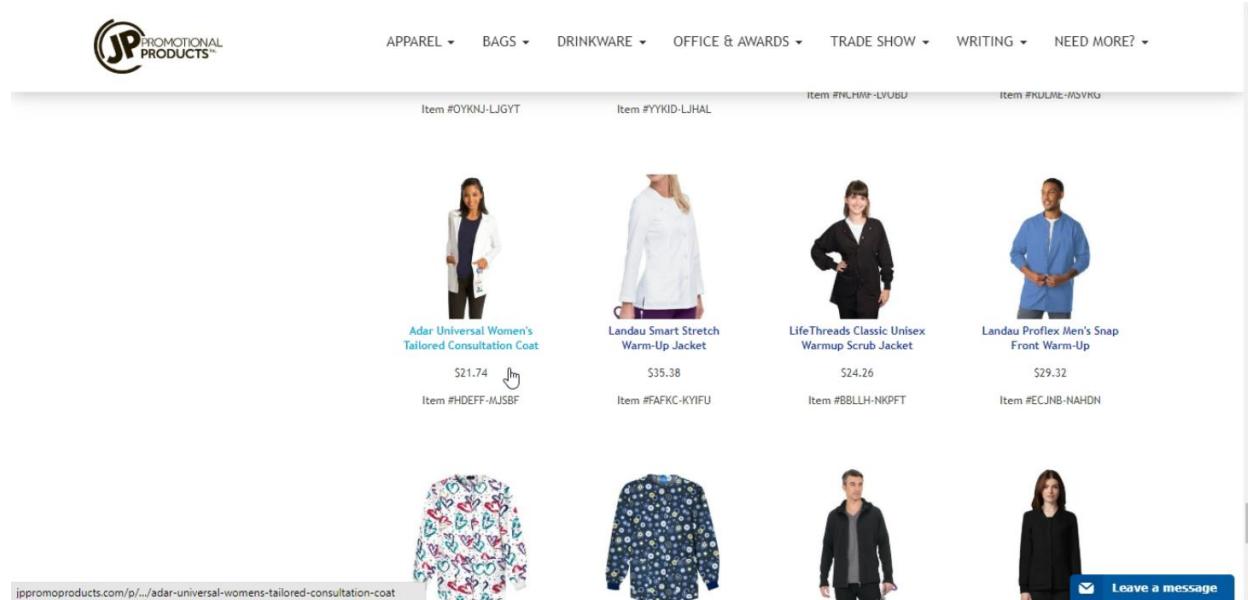
47. Cunningham is an all-in-one pharmacy offering a wide range of services including the sale of scrubs and medical uniforms.

48. Cunningham advertises/markets its business primarily through its website (<http://cunninghamdrugs.com/>).

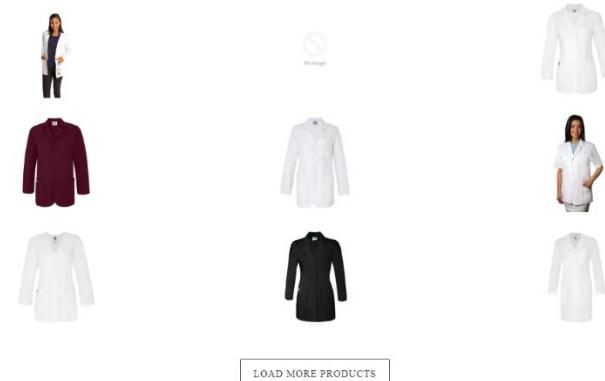
49. Transform was established in 2019 to acquire certain retail big-box stores and department stores. Its subsidiaries include Sears, a leading integrated retailer providing a wide range of home merchandise, and Kmart, a leading integrated retailer offering quality products through a portfolio of exclusive brands.

50. Transform advertises/markets its business primarily through its websites (<https://transformco.com/>, <https://www.sears.com/>, and <https://www.kmart.com/>) and social media (e.g., <https://www.facebook.com/sears> and <https://www.facebook.com/kmart>).

51. On a date before Plaintiff's above-referenced copyright registration of the First Photograph, JP published the First Photograph on its website in connection with the sale of an 'Adar Universal Women's Tailored Consultation Coat' for \$21.74 (at <https://jppromoproducts.com/scrub-jackets.htm>):



52. On a date before Plaintiff's above-referenced copyright registration of the First Photograph, School Uniforms published the First Photograph on its website in connection with the sale of an 'Adar Universal Womens 28" Tailored Consultation Coat' for \$21.99 (at <https://schooluniforms.com/collections/adar>):



Customer Service

Search

Over 60 Years

Frank Bee SchoolUniforms.com Since 1956!

Blogs



(at <https://schooluniforms.com/collections/adar/products/adar-universal-womens-28-tailored-consultation-coat#387553067041-1>):



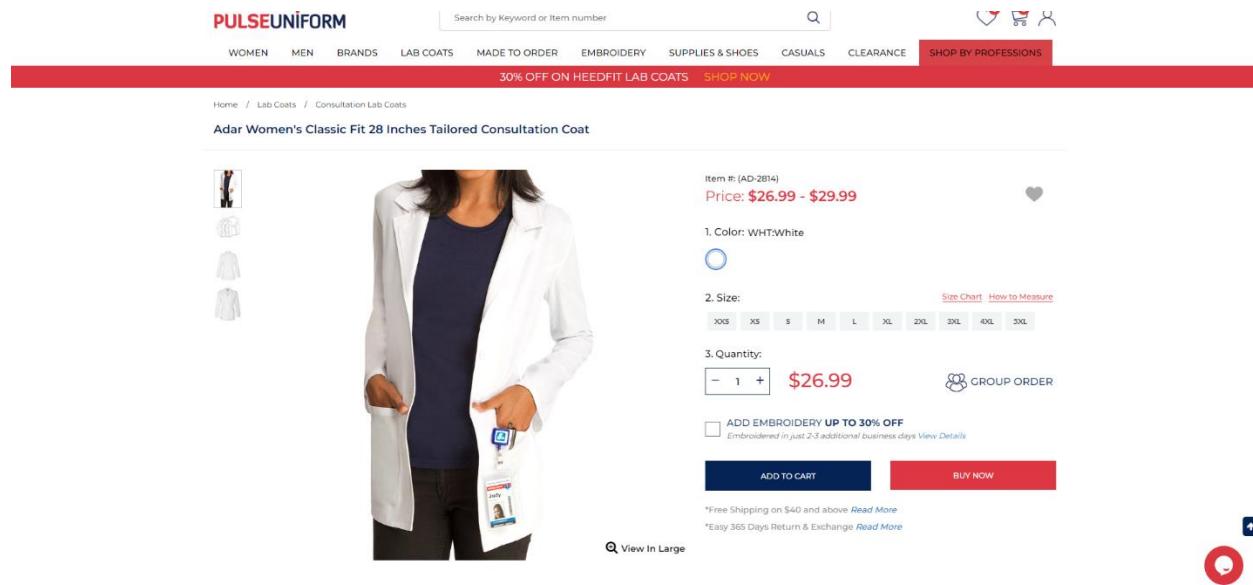
53. On a date before Plaintiff's above-referenced copyright registration of the First Photograph, Pulse Uniform published the First Photograph on its website in connection with the sale of an 'Adar Universal Womens 28" Tailored Consultation Coat' for \$26.99 (at <https://www.pulseuniform.com/search.asp?q=adar#>):

 A screenshot of the Pulse Uniform website. The top navigation bar includes links for WOMEN, MEN, BRANDS, LAB COATS, MADE TO ORDER, EMBROIDERY, SUPPLIES & SHOES, CASUALS, CLEARANCE, and SHOP BY PROFESSIONS. Below the navigation are several product listings:
 

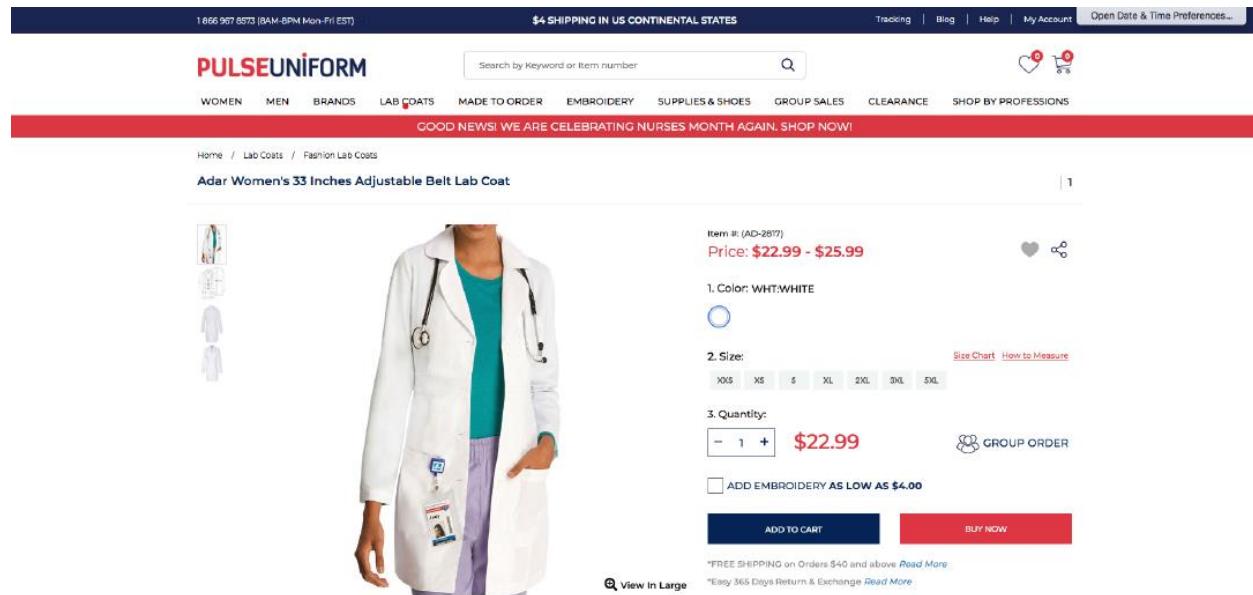
- Adar Unisex Two Pocket Medium Rise Petite Scrub Pants**: \$15.99
- Adar Classic Fit Sweetheart V-Neck Nursing Scrub Top**: \$17.99
- Adar Women's Medical Multi Pocket Drawstring Scrub Pants**: \$17.99
- Adar Pro Women's Yoga Knit Waist Tailored Skinny Tall Pant**: \$28.99
- Adar Silvan Unisex Cobbler Apron Three Pack**: \$31.99
- Adar Women's Classic Fit 28 Inches Tailored Consultation Coat**: \$26.99
- ADAR Pro Women's Flawless Plus Scrub Set**: \$58.99

 At the bottom of the page, there is a cookie consent message: "This website uses cookies to ensure you get the best experience on our website. If you continue to use this site, you consent to our use of cookies. View updated Privacy Policy." with "OK" and "Accept" buttons.

(at <https://www.pulseuniform.com/styleshop.asp?styledefault=AD-2814>):



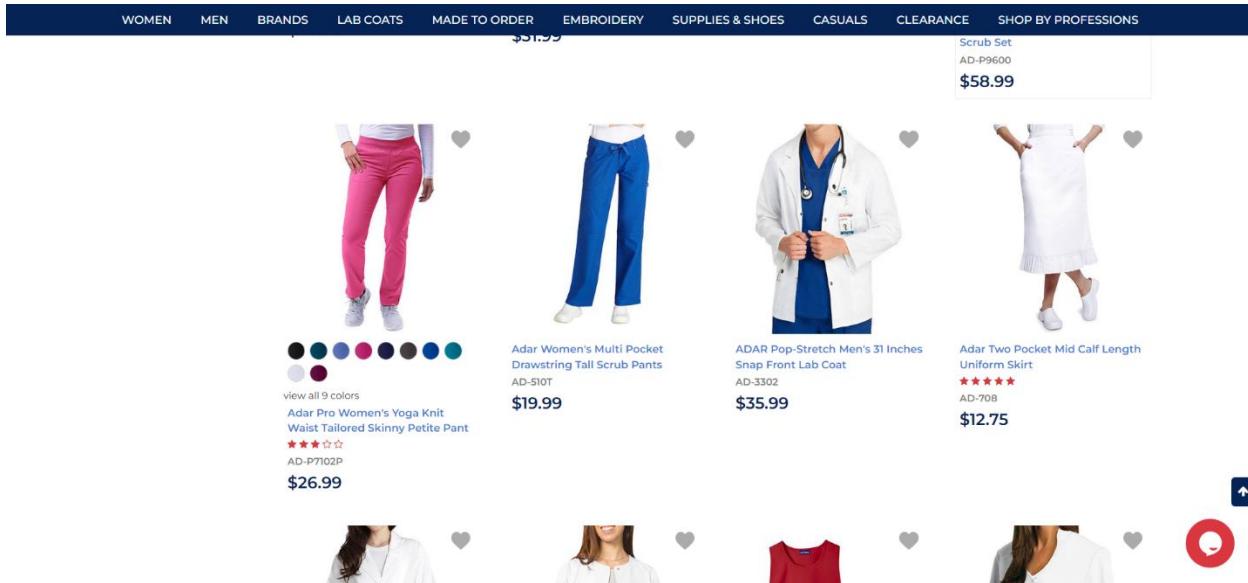
54. On a date before Plaintiff's above-referenced copyright registration of the Third Photograph, Pulse Uniform published the Third Photograph on its website in connection with the sale of an 'ADAR Women's 33 Inches Adjustable Belt Lab Coat' for \$22.99 (at <https://www.pulseuniform.com/styleshop.asp?styledefault=AD-2817>):



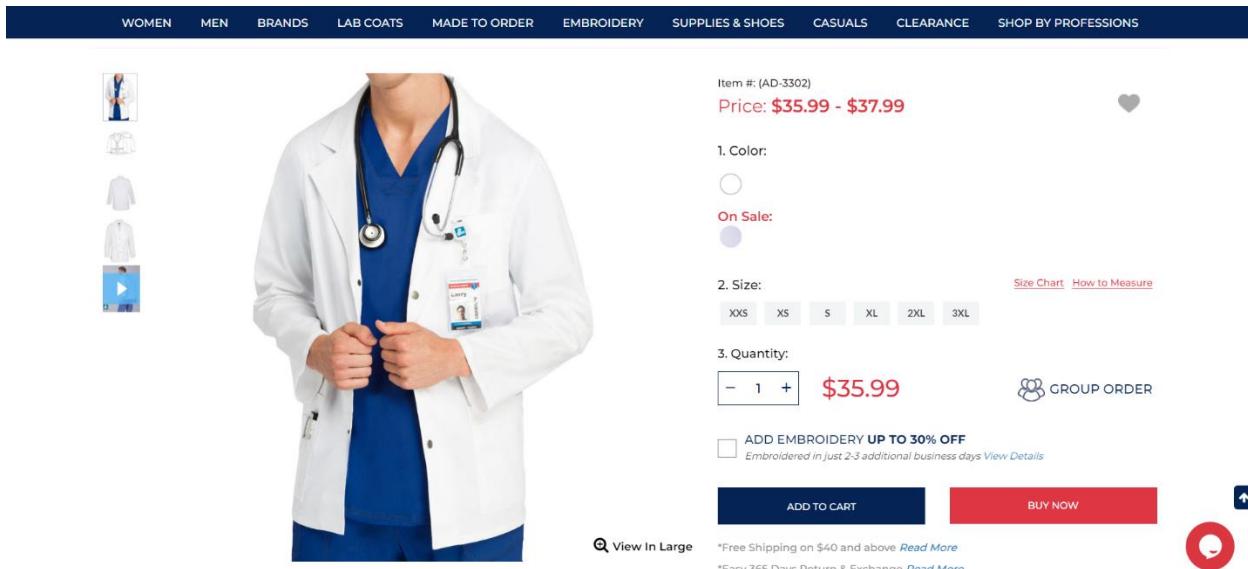
#### Description

Why do professionals love the Adar uniforms lab coat? They are simply high on style and performance. The white lab coat caters to all your workwear needs. With its long set-in sleeves and back belt, make an impression no matter where you go.

55. On a date before Plaintiff's above-referenced copyright registration of the Fifth Photograph, Pulse Uniform published the Fifth Photograph on its website in connection with the sale of an 'ADAR Pop-Stretch Men's 31 Inches Snap Front Lab Coat' for \$35.99 (at <https://www.pulseuniform.com/search.asp?q=adar%23#>):

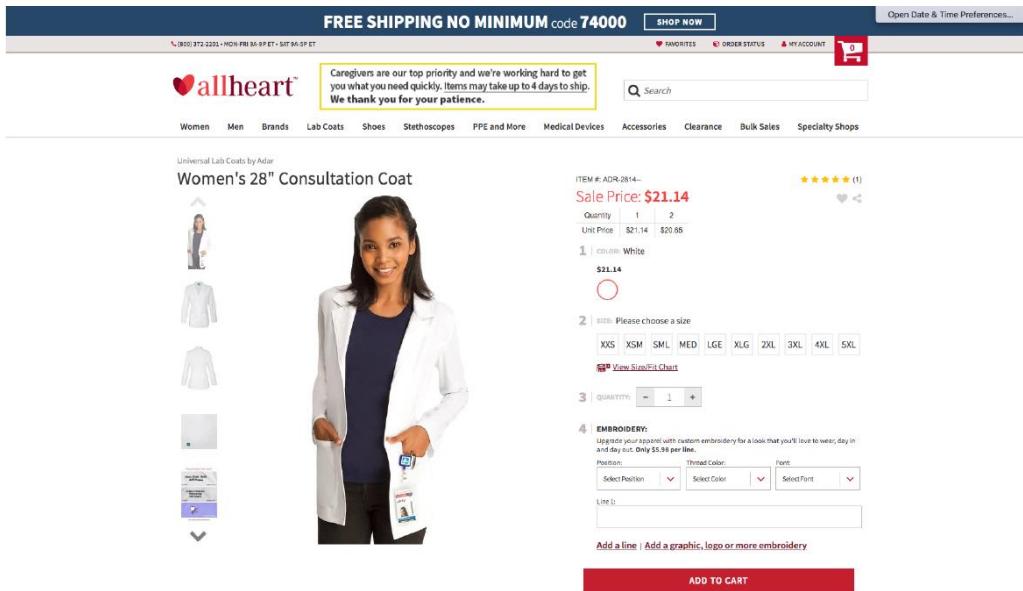


(at <https://www.pulseuniform.com/styleshop.asp?styledefault=AD-3302>):

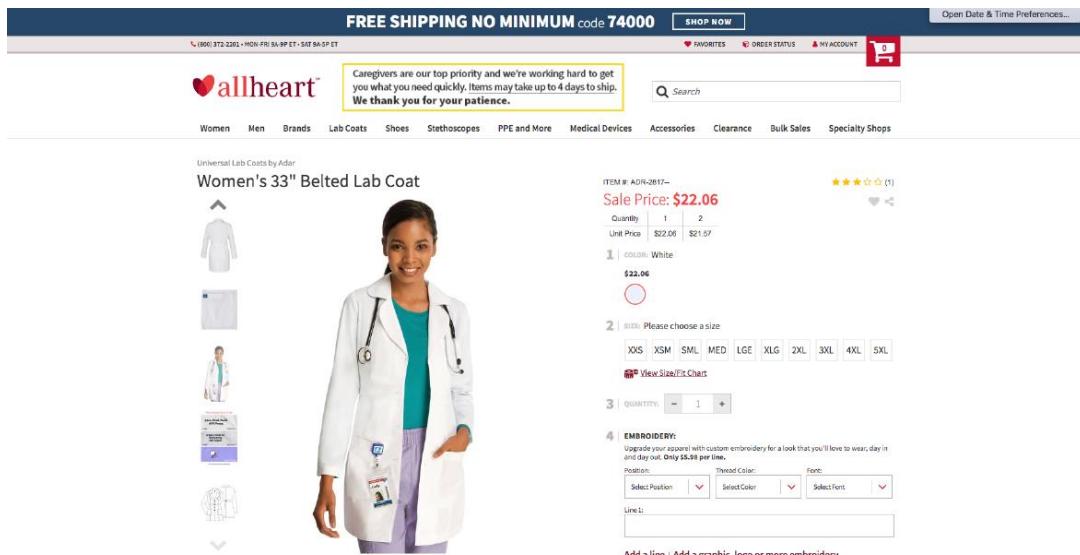


56. On a date before Plaintiff's above-referenced copyright registration of the First Photograph, AllHeart published the First Photograph on its website in connection with the sale

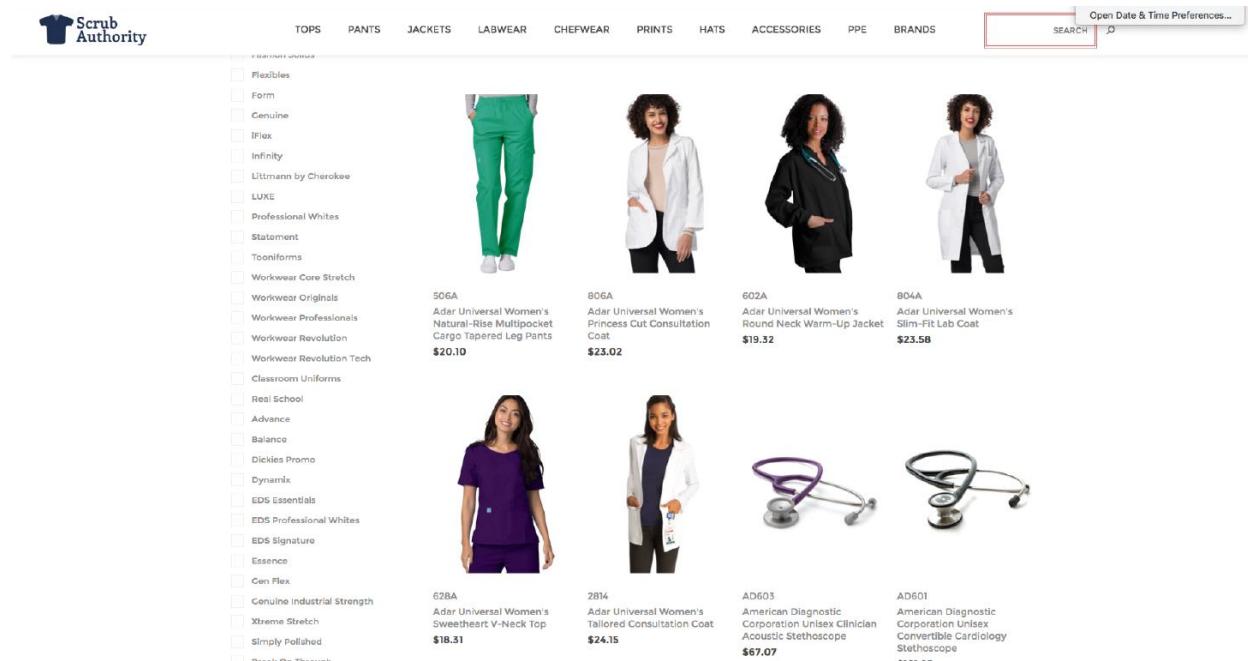
of a ‘Women’s 28” Consultation Coat’ for \$21.14 (at <https://allheart.com/universal-lab-coats-by-adar-women-apos-s-womens-28—consultation-coat/p/adr2814>):



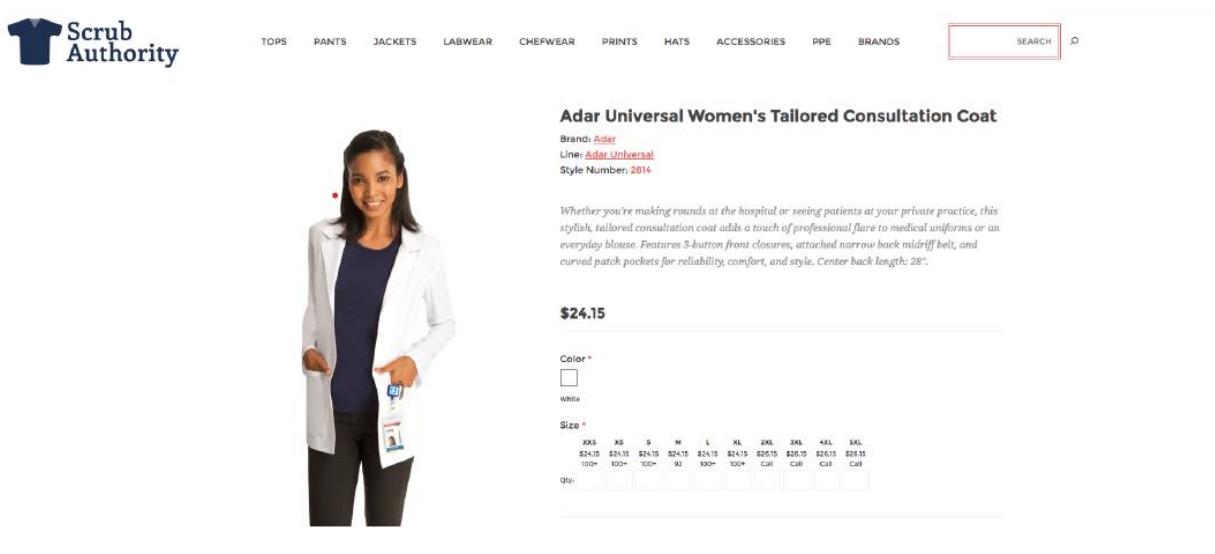
57. On a date before Plaintiff’s above-referenced copyright registration of the Third Photograph, AllHeart published the Third Photograph on its website in connection with the sale of a ‘Women’s 33” Belted Lab Coat’ for \$22.06 (at <https://allheart.com/universal-lab-coats-by-adar-womenaposs-33-inch-belted-lab-coat/p/adr2817>):



58. On a date before Plaintiff's above-referenced copyright registration of the First Photograph, Scrub Authority published the First Photograph on its website in connection with the sale of an 'Adar Universal Women's Tailored Consultation Coat' for \$24.15 (at [https://scrubauthority.com/collections/all-products?gf\\_81672=Adar&limit=48&page=2](https://scrubauthority.com/collections/all-products?gf_81672=Adar&limit=48&page=2)):



(at <https://scrubauthority.com/products/adar-universal-women-s-tailored-lab-coat-white?variant=43967088459990>):



59. On a date before Plaintiff's above-referenced copyright registration of the Second Photograph, Scrub Authority published the Second Photograph on its website in connection with the sale of an 'Adar Universal Lapel Collar Buttoned Top' for \$18.64 (at [https://scrubauthority.com/collections/all-products?gf\\_81672=Adar&limit=48](https://scrubauthority.com/collections/all-products?gf_81672=Adar&limit=48)):

**BRANDS**

**GENDER**

Display 48 per page

View as

Sort by Name: A to Z

	Product ID	Product Name	Price
<input type="checkbox"/>	P7004	Adar Pro Women's Tailored Peplum Top	\$30.32
<input type="checkbox"/>	P7102	Adar Pro Women's Tailored Skinny Pant	\$35.94
<input type="checkbox"/>	P7002	Adar Pro Women's Tailored V-Neck Top	\$29.20
<input type="checkbox"/>	2629	Adar Universal Lapel Collar Buttoned Top	\$18.64

**PRODUCT TYPE**

- PPE
- Tops
- Pants
- Jackets
- Dresses
- Labwear
- Scrub Sets
- Shirts

(at [https://scrubauthority.com/collections/all-products?gf\\_81672=Adar&sort\\_by=relevance&limit=48&q=button+top](https://scrubauthority.com/collections/all-products?gf_81672=Adar&sort_by=relevance&limit=48&q=button+top)):

**PRODUCTS TAGGED WITH 'BUTTON FRONT'**

**Display** 48 per page

View as

Sort by Name: A to Z

	Product ID	Product Name	Price
<input type="checkbox"/>	2629	Adar Universal Lapel Collar Buttoned Top	\$18.64
<input type="checkbox"/>	BOSA	Adar Universal Unisex Classic Consultation Coat	\$21.79
<input type="checkbox"/>	BOBA	Adar Universal Unisex Midriff Lab Coat	\$24.93
<input type="checkbox"/>	2816	Adar Universal Unisex Short Sleeve Consultation Coat	\$22.35

(at <https://scrubauthority.com/products/adar-universal-women-s-lapel-collar-top-white?variant=43967087804630> ):


[TOPS](#) [PANTS](#) [JACKETS](#) [LABWEAR](#) [CHEFWEAR](#) [PRINTS](#) [HATS](#) [ACCESSORIES](#) [PPE](#) [BRANDS](#)
 SEARCH

**Adar Universal Lapel Collar Buttoned Top**

 Brand: [Adar](#)  
 Line: [Adar Universal](#)  
 Style Number: 2629

Crispy elegant traditional nurse wear is a classic staple. Princess cut fitted top features angled pockets, a lapel collar that lies flat in the neatest way and buttoned back belt detailing that creates soft shirring. Five button front closure and stitched seams throughout. Center back length: 27".

**\$18.64**

 Color \*  
 White

 Size \*  

XS	S	M	L	XL	2XL	3XL	4XL	5XL
3/8-84 100+	3/8-84 10	3/8-84 8	3/8-84 16	3/8-84 18	3/8-84 24	3/8-84 24	3/8-84 24	3/8-84 24
3/8-84 100+	3/8-84 10	3/8-84 8	3/8-84 16	3/8-84 18	3/8-84 24	3/8-84 24	3/8-84 24	3/8-84 24

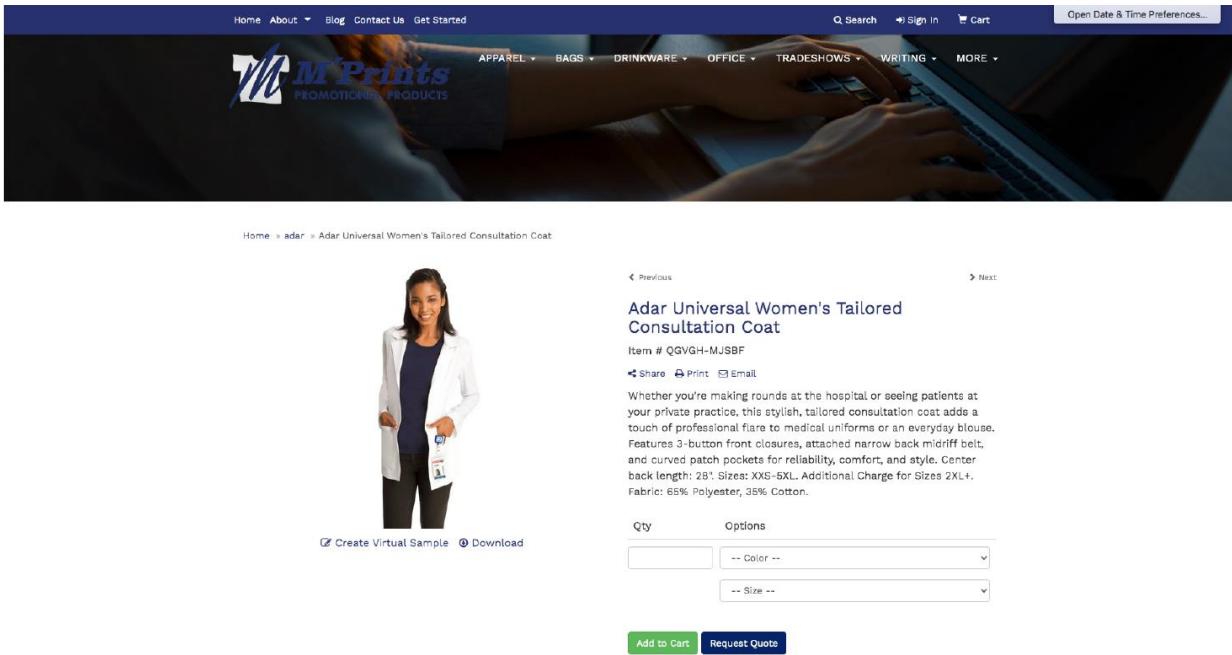
Qty:

60. On a date before Plaintiff's above-referenced copyright registration of the First Photograph, M'Prints published the First Photograph on its website in connection with the sale of an 'Adar Universal Women's Tailored Consultation Coat' for \$24.15 (at <https://mprintspromo.com/:quicksearch.htm?quicksearchbox=adar>):

The screenshot shows a grid of eight product images with their details:

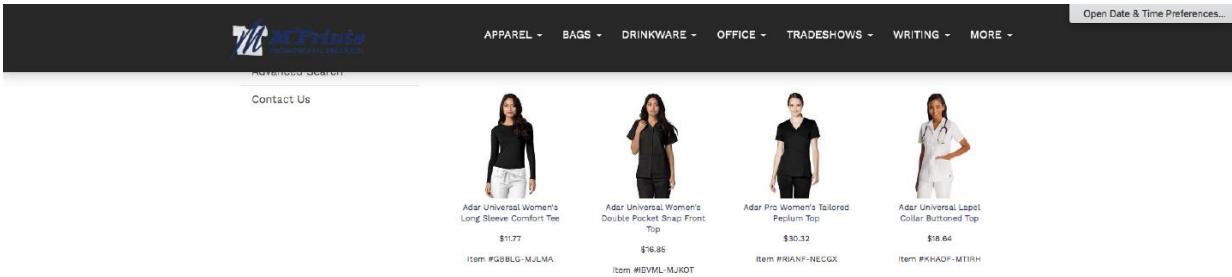
- Adar Universal Women's Long Sleeve Comfort Tee**: \$17.77, Item #QBLGL-MULMA
- Adar Universal Women's Double Pocket Snap Front Top**: \$16.85, Item #BVML-MUKOT
- Adar Pro Women's Tailored Peplum Top**: \$30.32, Item #RIANF-NECGX
- Adar Universal Lapel Collar Buttoned Top**: \$18.64, Item #KHAOF-MTIRH
- Adar Universal Women's Tailored Consultation Coat**: \$24.15, Item #QGVGH-MJSBF
- Adar Universal Women's Adjustable Belt Lab Coat**: \$25.27, Item #CCWPC-MJGEK
- Adar Universal Women's Classic Comfort Natural-Rise Tapered Leg Pants**: \$16.77, Item #FICXII-MJMKI
- Adar Universal Lapel Collar Nurse Top**: \$18.64, Item #SHAPH-MTIQZ

(at <https://mprintspromo.com/p/QGVGH-MJSBF/adar-universal-womens-tailored-consultation-coat>):



The screenshot shows a product page for the "Adar Universal Women's Tailored Consultation Coat". At the top, there is a navigation bar with links for Home, About, Blog, Contact Us, Get Started, Q Search, Sign In, Cart, and Open Date & Time Preferences. The main menu includes APPAREL, BAGS, DRINKWARE, OFFICE, TRADESHOWS, WRITING, and MORE. The page features a large image of a woman wearing the white coat over a dark top and black pants. Below the image, there is a "Create Virtual Sample" button and a "Download" link. The product title is "Adar Universal Women's Tailored Consultation Coat" with Item # QSVGH-MJBF. A detailed description follows: "Whether you're making rounds at the hospital or seeing patients at your private practice, this stylish, tailored consultation coat adds a touch of professional flare to medical uniforms or an everyday blouse. Features 3-button front closures, attached narrow back midriff belt, and curved patch pockets for reliability, comfort, and style. Center back length: 28". Sizes: XXS-XL. Additional Charge for Sizes 2XL+. Fabric: 65% Polyester, 35% Cotton. Below the description are dropdown menus for Qty, Color, and Size, along with "Add to Cart" and "Request Quote" buttons.

61. On a date before Plaintiff's above-referenced copyright registration of the Second Photograph, M'Prints published the Second Photograph on its website in connection with the sale of an 'Adar Universal Lapel Collar Buttoned Top' for \$18.64 (at <https://mprintspromo.com/:quicksearch.htm?quicksearchbox=adar>):



The screenshot shows a grid of four women's tops on the M'Prints website. The items are: 1. Adar Universal Women's Long Sleeve Comfort Tee (Item #QSBLG-MJLMA, \$11.77). 2. Adar Universal Women's Double Pocket Snap Front Top (Item #BVML-MJKOT, \$16.85). 3. Adar Pro Women's Tailored Peplum Top (Item #PRANF-NECX, \$30.32). 4. Adar Universal Lapel Collar Buttoned Top (Item #KHAOF-MTIRH, \$18.64). Each item has a small thumbnail image and a brief description with price and item number.

(at <https://www.mprintspromo.com/p/KHAOF-MTIRH/adar-universal-lapel-collar-buttoned-top>):

Home About Blog Contact Us Get Started Q Search Sign In Cart Open Date & Time Preferences...

**M Prints**  
PROMOTIONAL PRODUCTS

APPAREL BAGS DRINKWARE OFFICE TRADESHOWS WRITING MORE

Home > adar > Adar Universal Lapel Collar Buttoned Top

◀ Previous Adar Universal Lapel Collar Buttoned Top ▶ Next

Item # KHAOF-MTIRH

Share Print Email

Crisp elegant traditional nurse wear is a classic staple. Princess cut fitted top features angled pockets, a lapel collar that lies flat in the neatest way and buttoned back belt detailing that creates soft shirring. Five button front closure and stitched seams throughout. Center back length: 27". Sizes: XXS-5XL. Additional Charge for Sizes 2XL+. Fabric: 65% Polyester, 35% Cotton, Durable Poplin.

Qty Options

Create Virtual Sample  Download

-- Color --  
-- Size --

62. On a date before Plaintiff's above-referenced copyright registration of the First Photograph, Bright Ideas published the First Photograph on its website in connection with the sale of an 'Adar Universal Women's Tailored Consultation Coat' (at <https://brightideasstore.com/:quicksearch.htm?quicksearchbox=adar>):



(at <https://brightideasstore.com/p/HLXF-MJSBF/adar-universal-womens-tailored-consultation-coat>):

BRIGHT IDEAS!

Featured Showrooms Apparel Bags Drinkware Fun & Outdoors Office Technology Writing Contact

Quick Search

505.837.9648 info@brightideasstore.com

◀ Previous Adar Universal Women's Tailored Consultation Coat ▶ Next

Item # HLXF-MJSBF

Share Print Email

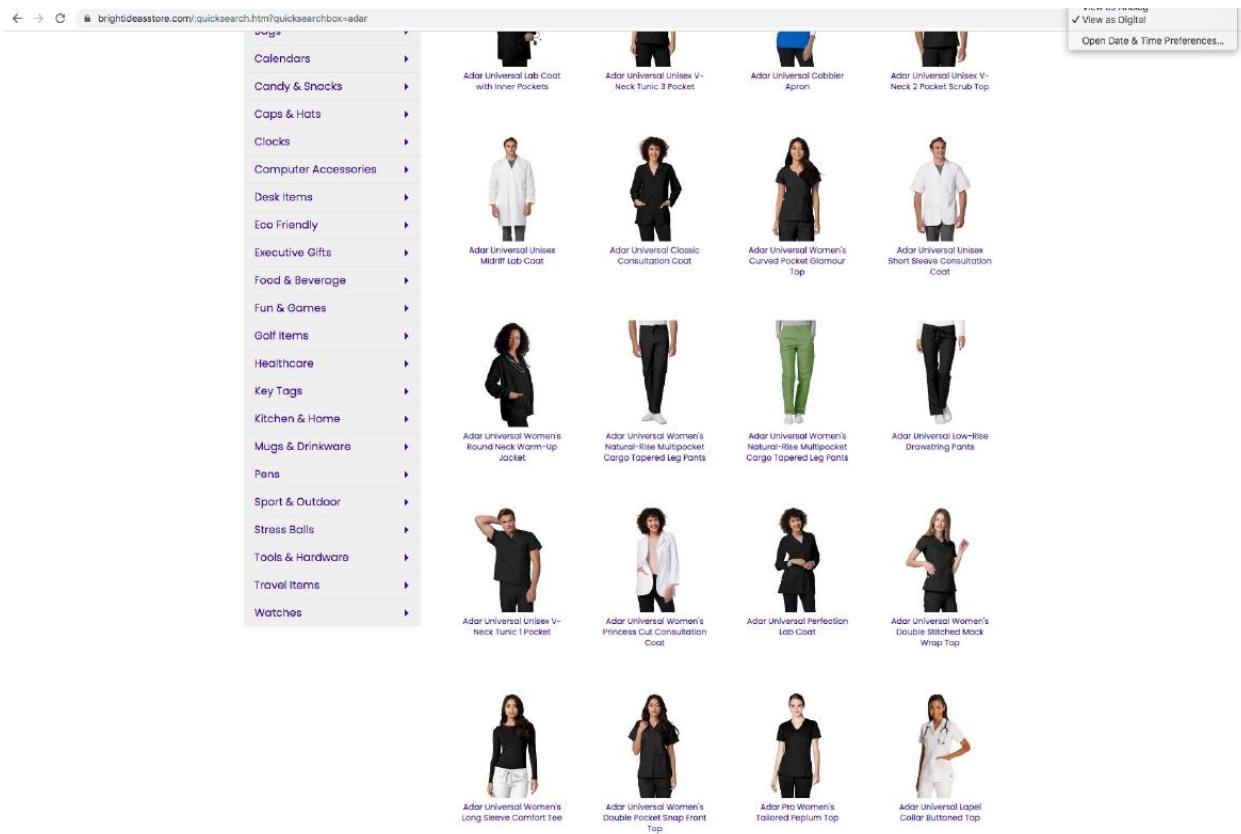
Whether you're making rounds at the hospital or seeing patients at your private practice, this stylish, tailored consultation coat adds a touch of professional flare to medical uniforms or an everyday blouse. Features 3-button front closures, attached narrow back midriff belt, and curved patch pockets for reliability, comfort, and style. Center back length: 28". Sizes: XXS-5XL. Additional Charge for Sizes 2XL+. Fabric: 65% Polyester, 35% Cotton.

Qty Options

Create Virtual Sample  Download

-- Color --

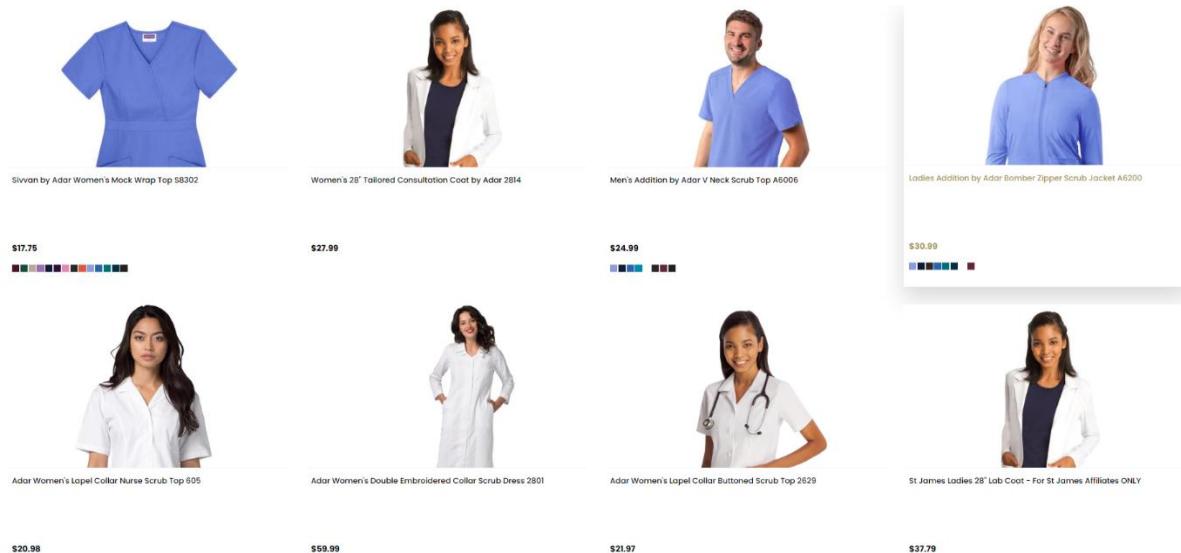
63. On a date before Plaintiff's above-referenced copyright registration of the Second Photograph, Bright Ideas published the Second Photograph on its website in connection with the sale of an "Adar Universal Women's Tailored Consultation Coat" (at <https://brightideasstore.com/:quicksearch.htm?quicksearchbox=adar>):



(at <https://brightideasstore.com/p/BMCAD-MTIRH/adar-universal-lapel-collar-buttoned-top>):

The screenshot shows a product page for the "Adar Universal Lapel Collar Buttoned Top". The page includes the Bright Ideas logo at the top, followed by a navigation bar with links for Sign In, Cart, Facebook, Twitter, LinkedIn, Quick Search, and contact information (506.837.8646, info@brightideasstore.com). The main content area features a large image of a woman wearing the white scrub top, with the product name and item number (BMCAD-MTIRH) displayed above it. Below the image, there are links for Share, Print, and Email. A detailed description of the product follows, mentioning it is a "Crispy elegant traditional nurse wear is a classic staple. Princess cut fitted top features angled pockets, a lapel collar that lies flat in the neatest way and buttoned back belt detailing that creates soft shirring. Five button front closure and stitched seams throughout. Center back length: 27". Sizes: XXS-6XL. Additional Charge for Sizes 2XL+. Fabric: 65% Polyester, 35% Cotton, Durable Poplin." The page also includes sections for Qty, Options, Color, and Size selection.

64. On a date before Plaintiff's above-referenced copyright registration of the Second Photograph, LabWear, published the Second Photograph on its website in connection with the sale of an 'Women's 28" Tailored Consultation Coat by Adar 2814' for \$27.99 and 'St. James 28" Lab Coat - For St. James Affiliates ONLY' for \$37.79 (at <https://labwear.com/search?page=5&q=adar>):



(at [https://labwear.com/products/adar-womens-28-tailored-consultation-coat?\\_pos=42&\\_sid=18cc551cb&\\_ss=r](https://labwear.com/products/adar-womens-28-tailored-consultation-coat?_pos=42&_sid=18cc551cb&_ss=r)):

**Women's 28" Tailored Consultation Coat by Adar 2814**

Product Code: 2814

1. Color: Make this Selection First

2. Size: Make this Selection Next  
 2XS    XS    Small    Medium    Large    XL    2XL    3XL  
 4XL    5XL

Sizing Info

3. Embroidery This section is for Name embroidery  
**ONLY. Do Not add a logo/info here. Please email your LOGO to Sales@labwear.com**

Left Chest    Right Chest

Quantity

Price:

(at

[https://labwear.com/products/st-james-ladies-lab-coat-2814?\\_pos=48&\\_sid=18cc551cb&\\_ss=r](https://labwear.com/products/st-james-ladies-lab-coat-2814?_pos=48&_sid=18cc551cb&_ss=r)):

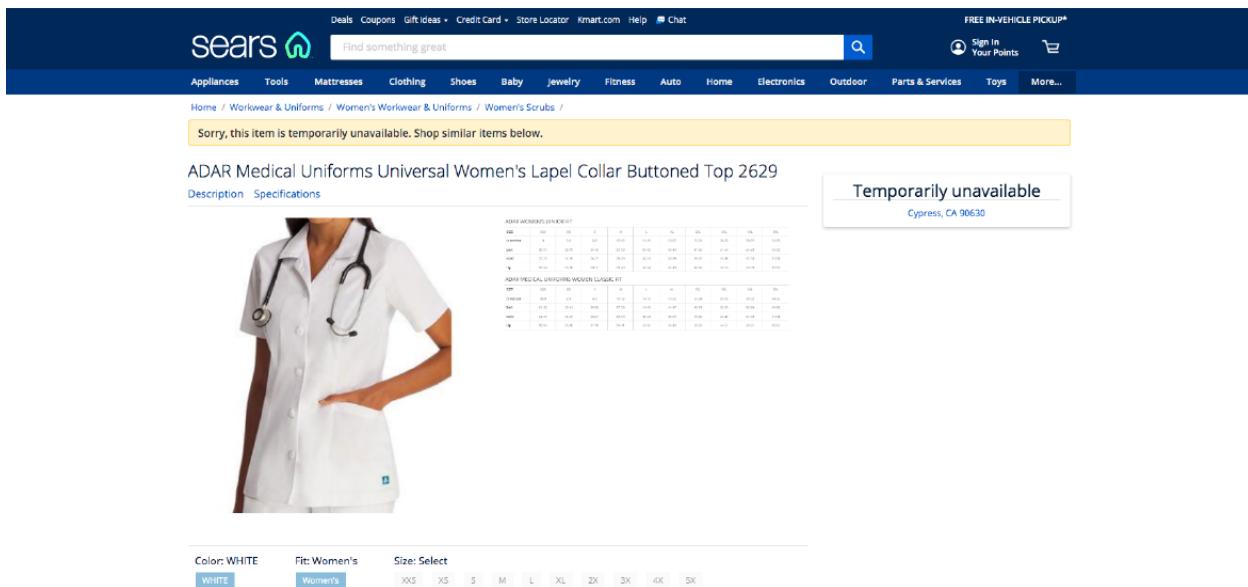
The screenshot shows the LABWEAR.com website. At the top, there is a navigation bar with links for Lab Coat Embroidery, Women's Lab Coats, Men's Lab Coats, Women's Scrubs, Men's Scrubs, Unisex Lab Coats and Scrubs, Brands, and Accessories. There is also a search bar, a 'My Account' button, and a shopping cart icon. Below the navigation, a breadcrumb trail shows 'Home > St James Ladies 28" Lab Coat - For St James Affiliates ONLY'. On the left, there is a vertical sidebar with small thumbnail images of various lab coats. In the center, there is a large image of a woman wearing a white lab coat over a dark top. To the right of the image, the product title 'St James Ladies 28" Lab Coat - For St James Affiliates ONLY' is displayed, along with the product code 'STK2814'. Below the title, there are three numbered sections: 1. Color: Make this Selection First (with a color swatch), 2. Size: Make this Selection Next (with size options: 2XS, XS, Small, Medium, Large, XL, 2XL, 3XL, 4XL, 5XL), and 3. Embroidery (with a note: 'This section is for Name embroidery ONLY. Do Not add a logo info here. Please email your LOGO to Sales@labwear.com'). There are checkboxes for 'Left Chest' and 'Right Chest' for embroidery placement. Below these, there is a 'Quantity' input field set to '1' and a 'Price:' input field containing '\$11.99'. A 'Add To Cart' button is at the bottom.

65. On a date before Plaintiff's above-referenced copyright registration of the Second Photograph, Cunningham published the Second Photograph on its website for its "Products and Services" page (at <http://cunninghamdrugs.com/services/>):

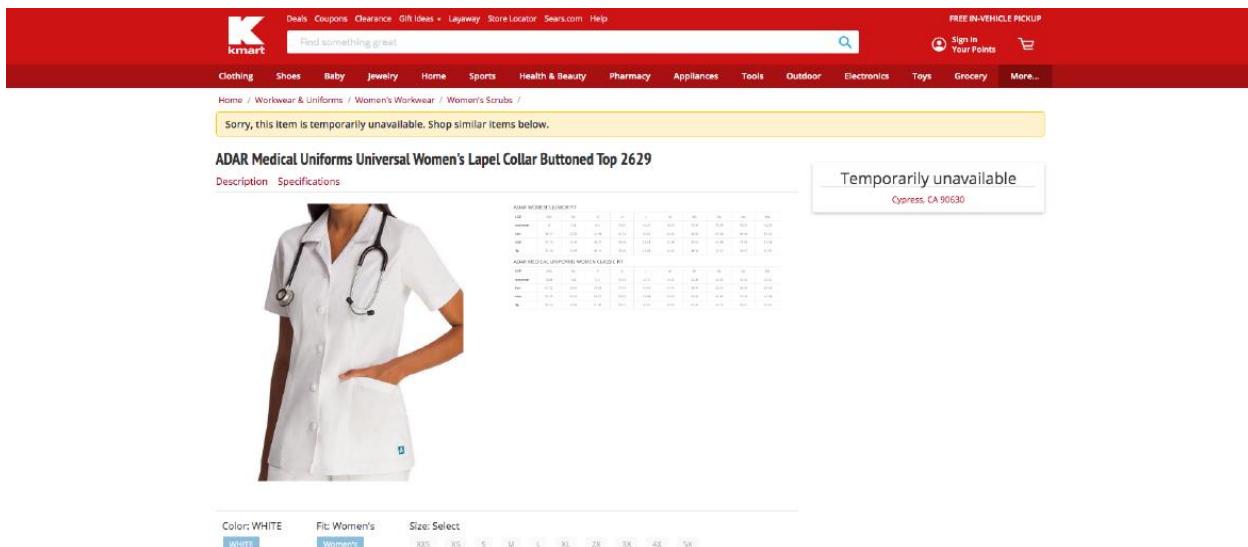
The screenshot shows the Cunningham Drug Co., Inc. website. At the top, there is a logo with a stylized 'RX' inside a circle, followed by the text 'CUNNINGHAM DRUG CO., INC.' and 'in New Tazewell, TN since 1947'. To the right, there is a location pin indicating 'Third & Broad Streets New Tazewell, TN 37825', a search bar, and a 'adar' button. Below the header, there is a navigation menu with links for HOME, ABOUT, PRODUCTS & SERVICES, APPAREL, FOOTWEAR, CONTACT, and PRESCRIPTION REFILL. The 'PRODUCTS & SERVICES' link is highlighted. The main content area features a large image of two crosses against a sunset background. Below the image, the heading 'Products & Services' is displayed, followed by a paragraph about the wide variety of services offered. A bulleted list of services includes: Fast and Friendly Prescription Service, Free Local Delivery, Immunizations, Web-based and Voice/Refill System, Sitters for the Elderly, Vitamins and Supplements, Weighted Blankets, Complete Line of Home Healthcare and DME Products, Footwear, Apparel, and Flea and Tick Control for Pets. To the right of the text, there is an image of a woman in a white medical uniform with a stethoscope.

66. On a date before Plaintiff's above-referenced copyright registration of the Second

Photograph, Transform published the Second Photograph on its websites in connection with the sale of an ‘ADAR Medical Uniforms Universal Women’s Lapel Collar Buttoned Top 2629’ (at <https://sears.com/adar-medical-uniforms-universal-women-s-lapel-collar-buttoned/p-00000000000010145766000000000000ADAD2629P>):



(at <https://kmart.com/adar-medical-uniforms-universal-women-s-lapel-collar-buttoned/p-00000000000010145766000000000000ADAD2629P>):



67. True and correct copies of the screenshots from Defendants' websites, webpages,

and/or social media, displaying the copyrighted Work, are attached hereto as Exhibit “C.”

68. Defendants are not and have never been licensed to use or display the Work. Defendants never contacted Plaintiff to seek permission to use the Work in connection with their respective websites, webpages, and/or social media or for any other purpose.

69. Defendants utilized the Work for commercial use – namely, in connection with the marketing of Defendants’ businesses.

70. Upon information and belief, Adar reproduced and distributed copies of the Work to the Sellers for their own commercial use.

71. Through its ongoing diligent efforts to identify unauthorized use of its photographs, Plaintiff discovered Defendants’ unauthorized use/display of the Work on June 18, 2020. Following Plaintiff’s discovery, Plaintiff notified Adar in writing of such unauthorized use. To date, Plaintiff has been unable to negotiate a reasonable license for the past infringement of its Work.

72. All conditions precedent to this action have been performed or have been waived.

**COUNT I – COPYRIGHT INFRINGEMENT**  
**(Sellers)**

73. Plaintiff re-alleges and incorporates paragraphs 1 through 72 as set forth above.

74. Each photograph comprising the Work is an original work of authorship, embodying copyrightable subject matter, that is subject to the full protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).

75. Plaintiff owns a valid copyright in each photograph comprising the Work, having registered the Work with the Register of Copyrights and owning sufficient rights, title, and interest to such copyright to afford Plaintiff standing to bring this lawsuit and assert the claim(s) herein.

76. As a result of Plaintiff's reproduction, distribution, and public display of the Work, the Sellers had access to the Work prior to their own reproduction, distribution, and public display of the Work on their websites, webpages, and/or social media.

77. The Sellers reproduced, distributed, and publicly displayed the Work without authorization from Plaintiff.

78. By their actions, the Sellers infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing, distributing, and publicly displaying the Work for their own commercial purposes.

79. Alternatively, to the extent the Sellers did not directly infringe Plaintiff's rights in the Work, the Sellers are liable for vicarious infringement.

80. As the owners of the websites in question and the entities which designed/published content thereon, the Sellers have the right and ability to control Adar's infringing acts yet declined or failed to stop Adar from engaging in its infringing activity.

81. Plaintiff is entitled to recover its actual damages resulting from the Sellers' unauthorized use of the Work and, at Plaintiff's election (pursuant to 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a disgorgement of the Sellers' profits from infringement of the Work, which amounts shall be proven at trial.

82. The Sellers' conduct has caused and any continued infringing conduct will continue to cause irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

**WHEREFORE**, Plaintiff demands judgment against the Sellers as follows:

- a. A declaration that the Sellers have infringed Plaintiff's copyrights in the Work;

- b. An award of actual damages and disgorgement of profits as the Court deems proper;
- c. Awarding Plaintiff interest, including prejudgment interest, on the foregoing amounts;
- d. Permanently enjoining the Sellers, their employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with the Sellers, from directly or indirectly infringing Plaintiff's copyrights or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Work or to participate or assist in any such activity; and
- e. For such other relief as the Court deems just and proper.

**COUNT II – COPYRIGHT INFRINGEMENT**  
**(Adar)**

- 83. Plaintiff re-alleges and incorporates paragraphs 1 through 72 as set forth above.
- 84. Each photograph comprising the Work is an original work of authorship, embodying copyrightable subject matter, that is subject to the full protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).
- 85. Plaintiff owns a valid copyright in each photograph comprising the Work, having registered the Work with the Register of Copyrights and owning sufficient rights, title, and interest to such copyright to afford Plaintiff standing to bring this lawsuit and assert the claim(s) herein.
- 86. Adar had access to the Work prior to its own reproduction and distribution of the Work to the Sellers.
- 87. Adar reproduced and distributed the Work without authorization from Plaintiff.
- 88. By its actions, Adar infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing and distributing the Work for its own commercial purposes.
- 89. Alternatively, to the extent Adar did not directly infringe Plaintiff's rights in the

Work, Adar is liable for contributory infringement.

90. “The Copyright Act does not specifically provide for such extended liability, instead describing only the party who actually engages in infringing conduct - the one who directly violates the prohibitions. Yet under general principles of law, vicarious liability or contributory liability may be imposed.” CoStar Grp., Inc., 373 F.3d at 549–550. “A defendant can also be found contributorily liable for copyright infringement.” Jalbert, 554 F. Supp. 2d at 68.

91. “Specifically, a party ‘who, with knowledge of the infringing activity, induces, causes, or materially contributes to the infringing conduct of another, may be held liable as a ‘contributory’ infringer.’” Id. (quoting Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc., 443 F.2d 1159, 1162 (2d Cir. 1971)). “The Supreme Court has stated that contributory liability ‘may be predicated on actively encouraging (or inducing) infringement through specific acts . . . .’” Id. (quoting Metro-Goldwyn-Mayer Studios, Inc., v. Grokster, Ltd., 545 U.S. 913, 942 (2005)). “Although the defendant must have knowledge of the infringing activity, ‘the defendant need only have known of the direct infringer’s activities, and need not have reached the legal conclusion that those activities infringed a copyrighted work.’” Id. (quoting Paul Goldstein, GOLDSTEIN ON COPYRIGHT, § 8.1 n. 1 (2005)). “Nor is it necessary that the defendant be aware that the infringing activity violates the copyright laws.” Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 489 (1984).

92. As Adar guides and implements the marketing plans with the Sellers, Adar has the ability to influence and control the infringing acts of its clients.

93. Thus, assuming Adar did not directly infringe, Adar caused or materially contributed to the Sellers’s infringing activity. Adar encouraged the Sellers to utilize copyrighted imagery on the Sellers’ websites, all while knowing the material was copyright protected.

94. Adar obtained a direct financial benefit from its own and/or the Sellers' infringing activities.

95. Plaintiff is entitled to recover its actual damages resulting from Adar's unauthorized use of the Work and, at Plaintiff's election (pursuant to 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a disgorgement of Adar's profits from infringement of the Work, which amounts shall be proven at trial.

96. Adar's conduct has caused and any continued infringing conduct will continue to cause irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

**WHEREFORE**, Plaintiff demands judgment against Adar as follows:

- a. A declaration that Adar has infringed Plaintiff's copyrights in the Work;
- b. An award of actual damages and disgorgement of profits as the Court deems proper;
- c. Awarding Plaintiff interest, including prejudgment interest, on the foregoing amounts;
- d. Permanently enjoining Adar, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Adar, from directly or indirectly infringing Plaintiff's copyrights or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Work or to participate or assist in any such activity; and
- e. For such other relief as the Court deems just and proper.

**Demand For Jury Trial**

Plaintiff demands a trial by jury on all issued so triable.

Dated: June 16, 2023

COPYCAT LEGAL PLLC  
3111 N. University Drive  
Suite 301  
Coral Springs, FL 33065  
Telephone: (877) 437-6228  
[dan@copycatlegal.com](mailto:dan@copycatlegal.com)  
[christine@copycatlegal.com](mailto:christine@copycatlegal.com)

By: /s/ Daniel DeSouza  
Daniel DeSouza, Esq.  
Christine Zaffarano, Esq.